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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	)	
	)	
VS.	)	1:12-CR-217 JCC
	)	
	)	ALEXANDRIA, VIRGINIA
	)	DECEMBER 14, 2012
MAURICIO SANTOYO VELASCO	)	
_____	)	

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TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE JAMES C. CACHERIS  
UNITED STATES DISTRICT JUDGE

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Proceedings reported by stenotype, transcript produced by  
Julie A. Goodwin.

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United States District Court

401 Courthouse Square

Tenth Floor

Alexandria, Virginia 22314

1 (DECEMBER 14, 2012, 9:24 A.M., OPEN COURT.)

2 THE COURT: Take General Velasco.

3 MR. BEN'ARY: Good morning, Your Honor. Michael  
4 Ben'ARY for the United States.

5 THE COURT: Good morning, Mr. Ben'ARY.

6 MR. ZWERLING: Good morning, Your Honor. John  
7 Zwerling and Oscar Rodriguez for --

8 THE COURT: Good morning, Mr. Zwerling and Mr.  
9 Rodriguez.

10 Swear the interpreter in this case, and would note  
11 that General Velasco is present and in person.

12 (THE OATH WAS ADMINISTERED TO INTERPRETER.)

13 THE INTERPRETER: My name is Eva Desrosier. I'm a  
14 federally certified Spanish interpreter.

15 (THE OATH WAS ADMINISTERED TO DEFENDANT.)

16 THE COURT: General Velasco, has the presentence  
17 report been read to you by Mr. Rodriguez and Mr. Zwerling?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And you've discussed it with him. Is that  
20 correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you feel the report is accurate  
23 concerning your background?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you feel the report is accurate

1 concerning your offense conduct?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you have any additions, corrections, or  
4 comments you would like to make to the report?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: You may have a seat, General. Okay.

7 Mr. Rodriguez, anything?

8 MR. RODRIGUEZ: Your Honor, with regards to that --

9 THE COURT: Why don't you come to the podium, please,  
10 sir.

11 I'll note for the record that I received an updated  
12 financial statement this morning from the probation officer.

13 MR. RODRIGUEZ: That is correct. Good morning, Your  
14 Honor. Oscar Rodriguez on behalf of the General.

15 Your Honor, there's a couple of minor matters that  
16 I would like to bring up regarding the PSI. Would the Court,  
17 before we start in the --

18 THE COURT: Give me the page numbers of where you want  
19 to go.

20 MR. RODRIGUEZ: Okay. Paragraph 17 there.

21 One moment, Your Honor.

22 (BRIEF PAUSE.)

23 MR. RODRIGUEZ: Your Honor, good morning. In  
24 paragraph 73 --

25 THE COURT: All right.

1 MR. RODRIGUEZ: -- it should reflect --

2 THE COURT: Let me get to that.

3 MR. RODRIGUEZ: -- that the family income is not --

4 THE COURT: Net monthly cash flow?

5 MR. RODRIGUEZ: Yes, sir.

6 THE COURT: It says 4- to \$6,000 monthly. Right?

7 MR. RODRIGUEZ: No. Paragraph 73 --

8 THE COURT: Okay.

9 MR. RODRIGUEZ: -- which is reflected in the net  
10 monthly income, it says 21,000.

11 THE COURT: Okay.

12 MR. RODRIGUEZ: And it should really -- or it should  
13 be 11,000. And I would like to explain it as follows.

14 Ms. Moran took into consideration the monthly  
15 income of the family business, which is from 4- to \$6,000 a  
16 month. And the \$5,000 that he receives as a pension, she  
17 additionally added \$3,000 in spousal income that no longer  
18 exists. She has been in the United States for a few months,  
19 and she's not receiving any --

20 THE COURT: So she's not running the sugar cane  
21 plantations?

22 MR. RODRIGUEZ: No, she's not, Your Honor.

23 THE COURT: Okay. All right.

24 MR. RODRIGUEZ: Nor the \$7,000 income from other  
25 household members. This does not apply. I think his portion

1 of the income of the family business is between 4- and \$6,000,  
2 but we have -- we have, for purposes of today, make that \$6,000  
3 a month, plus the -- the \$5,000 is the pension, which would be  
4 a correction on Paragraph 70 of 11,000 --

5 THE COURT: 73, you mean.

6 MR. RODRIGUEZ: Right.

7 THE COURT: Okay.

8 MR. RODRIGUEZ: Paragraph 73.

9 And then the other thing -- the other matter, Your  
10 Honor, is that it does not change the numbers, but in this --  
11 in the stocks it's reflected that they had \$52,082.48.

12 THE COURT: Okay. Where are you on that?

13 MR. RODRIGUEZ: Oh, I'm sorry, Your Honor. Paragraph  
14 67.

15 THE COURT: All right. Let me just get to that, sir.  
16 Okay.

17 67? Okay. The -- where are you beginning, on the  
18 bottom of page --

19 MR. RODRIGUEZ: At the bottom of the page, line 2.  
20 The -- it will not change --

21 THE COURT: The bottom of --

22 MR. RODRIGUEZ: -- the numbers. It was just --

23 THE COURT: Wait a minute. Let me hold you, please,  
24 Mr. Rodriguez.

25 For paragraph 67, it says cash on hand \$31,202.77.

1 It's the bottom of page 19.

2 Where are you? Are you on the bottom of page --

3 MR. RODRIGUEZ: Right below that it says stocks.

4 THE COURT: Yeah.

5 MR. RODRIGUEZ: And the stocks should not be

6 \$52,082.48. It should actually be \$12,111.20.

7 The -- the total assets are not affected in the  
8 numbers but -- because they're still -- the total assets still  
9 come out to \$1.561 million and four -- four dollars.

10 It's just that when it was typed and sent to her  
11 office, we had -- it was a misprint of one of the lines of cash  
12 on hand, and that kind of threw everything off. But it should  
13 include the 12,000 -- the stocks at \$12,000, and then the  
14 agriculture equipment which is \$52,082, and then the real  
15 estate properties which are --

16 THE COURT: Wait a minute. Let me get to the  
17 agriculture equipment now.

18 MR. RODRIGUEZ: That is --

19 THE COURT: On page 20?

20 MR. RODRIGUEZ: Yes, sir.

21 THE COURT: Okay.

22 MR. RODRIGUEZ: 52,082.

23 THE COURT: I don't see agriculture equipment now.

24 MR. RODRIGUEZ: Well, it's agriculture, but it's the  
25 equipment in the farms because under that is the real estate

1 properties values, which is \$993,228. It was just...

2 THE COURT: Okay.

3 MR. RODRIGUEZ: And then the --

4 THE COURT: I've got a little trouble following you.

5 On page 20 --

6 MR. RODRIGUEZ: Let me get the PSI.

7 THE COURT: Tell me where this change is.

8 MR. RODRIGUEZ: Page 20.

9 Well, Your Honor, she subdivided it further than  
10 what I subdivided it to make it -- simplify it for -- for her  
11 yesterday. And what I --

12 THE COURT: Okay. Where -- I mean, I don't see  
13 anything on the farm equipment here.

14 MR. RODRIGUEZ: Well, it says agriculture.

15 THE COURT: Windmill machinery, I see that.

16 MR. RODRIGUEZ: Yes, sir. The windmill machinery and  
17 the value of the windmill and the --

18 THE COURT: Okay. All right.

19 MR. RODRIGUEZ: -- and the value of the cars, which  
20 are all -- they're assets. And she did adopt the total assets  
21 of \$1,561,404.50. That is -- it's just that the stocks were  
22 misplaced in -- in the -- in the paper that I submitted or my  
23 secretary submitted.

24 THE COURT: So the total assets are what?

25 MR. RODRIGUEZ: \$1,561,404.50.



1 THE COURT: Okay.

2 MR. RODRIGUEZ: And the liabilities are \$260,939.71.

3 THE COURT: Okay. I have that total.

4 MR. RODRIGUEZ: And the total net worth should be  
5 reflected as -- I have it, and then she even has the  
6 difference, which is a bit lower, but it's \$1,300,464.80.

7 THE COURT: 0.08?

8 MR. RODRIGUEZ: 0.80.

9 THE COURT: 0.80. Okay. So that's \$1,300,464.80?

10 MR. RODRIGUEZ: That's correct.

11 THE COURT: Okay. This is paragraph 69. Okay.

12 Any other additions or corrections you want to  
13 make?

14 MR. RODRIGUEZ: No. Other than that, Your Honor,  
15 everything has been corrected. And I commend Ms. Moran for  
16 really working with me and helping me out in this matter and  
17 being patient. Some of these documents I had to translate  
18 from --

19 THE COURT: Okay.

20 MR. RODRIGUEZ: -- from down there, from Colombia to  
21 here. And the last -- I think the worst thing I ever did in  
22 college was accounting, so for me it was problematic.

23 THE COURT: Very well, sir.

24 MR. RODRIGUEZ: Thank you very much. I'll -- I'll  
25 come back and argue after --

1 THE COURT: Yeah.

2 MR. RODRIGUEZ: -- Mr. Zwerling's presentation.

3 THE COURT: We'll get to that.

4 Mr. Ben'Ary, do you have any additions or  
5 corrections or comments on the suggested changes that Mr.  
6 Rodriguez has made this morning?

7 MR. BEN'ARY: No, Your Honor. There's no objection to  
8 the Court making those changes.

9 THE COURT: Okay. I'll adopt those changes. Okay.  
10 And the Government doesn't have any other additions or  
11 corrections?

12 MR. BEN'ARY: No, Your Honor.

13 THE COURT: Okay. I'll adopt the presentence report  
14 with the additions or corrections that have been made. He's a  
15 39, VI, which is 360 to life. With a plea agreement, he's ten  
16 to 15 years.

17 Okay. So I'll hear argument on that.

18 MR. ZWERLING: Your Honor.

19 THE COURT: Mr. Zwerling.

20 MR. ZWERLING: Would the Court indulge us to split the  
21 argument? I'm going to do an introductory and touch on a  
22 couple of things, and then Mr. Rodriguez will do the --

23 THE COURT: Very well.

24 MR. ZWERLING: Thank you.

25 Your Honor, first thing I wanted to address was the

1 effect of the terrorism enhancements in the guidelines.

2 THE COURT: Okay. I was surprised that he got a 39,  
3 VI in the beginning. But apparently that's what -- VI is given  
4 to --

5 MR. ZWERLING: Right.

6 THE COURT: -- terrorist enhancement.

7 MR. ZWERLING: The -- the crime itself is material  
8 support to a terrorist organization, which would seem to  
9 encompass terrorism. And when they did the guidelines for that  
10 offense, you would have thought they would have included the  
11 fact that it was materially supporting terrorism or terrorists.  
12 And that the -- well, we did agree, when we entered into our  
13 agreement, that the application of the 3B1 is correct. It --  
14 in this case it leads to an absurd result because it gives you  
15 a guideline sentence that is double the maximum penalty by the  
16 statute. That doesn't seem to be very helpful. The guidelines  
17 are supposed to tell the Court where within the statutory  
18 punishment range the Court should focus, as being the heartland  
19 of sentences.

20 So this gives you, the Court, no help really  
21 because it's double -- it's more than double the maximum  
22 penalty. And what we would ask the Court to do in coming to  
23 our recommended sentence, which is a ten-year sentence, is to  
24 find that the category VI criminal history overstates Mister --  
25 General Santoyo Velasco's life history, vis-à-vis crime. He's

1 never been arrested before in his life.

2           And I recognize that that enhancement will have  
3 that effect on some people. That it won't -- it will have that  
4 effect on the people who have never been in trouble, but it  
5 won't have much of an effect on people who are genuinely  
6 category VI offenders. So it seems to punish more severely  
7 those with no criminal history than those with an extensive  
8 criminal history.

9           The other thing about it is that it will affect  
10 where he serves his time, what type of facility he's going to  
11 have to serve his time.

12           THE COURT: Do you have a recommendation on that?

13           MR. ZWERLING: We do, Your Honor. And Mr. Rodriguez  
14 is going to speak to that.

15           THE COURT: Okay.

16           MR. ZWERLING: But we ask the Court to reduce his  
17 category -- Criminal History Category to a I or a II so that he  
18 can be sent to the type of a place that we're asking for and  
19 not wind up with -- with the people in supermax in Colorado or  
20 similar places, penitentiaries, because of the category VI  
21 history. And we would ask the Court to increase his guideline  
22 range by five levels instead of 12, to vary down to that.  
23 We're not asking the Court to --

24           THE COURT: Okay.

25           MR. ZWERLING: -- depart, but to vary down to that,

1 and that would give a guideline range starting at 121 months.

2 THE COURT: Okay. What's the offense level?

3 MR. ZWERLING: That would be...

4 So, it would be a 32, Your Honor, if he's a  
5 category I. That would be 121 months. So there instead of a  
6 39, so that would be seven levels down.

7 THE COURT: You have 121 to 151.

8 MR. ZWERLING: Yes, Your Honor.

9 THE COURT: All right.

10 MR. ZWERLING: And that said, Your Honor, one area of  
11 this case that I would like to address before Mr. Rodriguez  
12 gets up is the peculiar nature of this offense in that this  
13 isn't the case where somebody is sending money or guns or  
14 things like that to help al-Qaeda or something like that. This  
15 is a situation in Colombia where you have a government, a  
16 democratically elected government, that has been fighting for  
17 as long as I've -- I've been aware. Marxist rebels who are  
18 trying to overthrow the government, and that would be the FARC  
19 and their allies. And they, in order to support their  
20 revolutionary aims, got into drug dealing, kidnappings,  
21 murders, extortion on all types of criminal behavior. The  
22 government basically was at war with them, similarly to Kabul  
23 and the Taliban, and -- but they couldn't be everywhere at  
24 once.

25 So as a result these right-wing paramilitary groups

1 grew up, supported initially by the landowners and the citizens  
2 in areas where the government didn't have control to protect  
3 them from the FARC. And the government worked with these  
4 groups in various ways over the years, and less so in more  
5 recent days, because these groups started to get into the same  
6 type of criminal behavior to support themselves that the FARC  
7 had. The main difference between the two in the latter days is  
8 that FARC was trying to overthrow the government, and that was  
9 not the aim of these other groups. They had become more of  
10 just general criminal elements that were into drug dealing,  
11 into kidnappings, doing awful things in the name of fighting  
12 the FARC.

13 But the government had a relationship that was a  
14 lot stronger with the AUC than with the FARC. And that is  
15 where Mr. Santoyo got in trouble because he had been a police  
16 officer for decades, over 30 years, and he's been involved in  
17 fighting the FARC for over 30 years. And in the beginning when  
18 he was working to build relationships with informants and  
19 people with information, a lot of them were connected with or  
20 high up in the AUC and the related groups that were associated  
21 with them and developed relationships with them. And in the  
22 latter years, he started to take financial gifts. The  
23 Government calls it bribes, and that's --

24 THE COURT: About seven years, right, from 2001 to  
25 2008?

1 MR. ZWERLING: That's the range of the conspiracy,  
2 Your Honor. And it -- the thing that we take issue with in our  
3 memo is the significance of the amounts. They're getting their  
4 information from informants who some of which, you know, don't  
5 have direct knowledge, and it's part of a rumor mill, you know.  
6 And others, you know, have exaggerated, in our opinion -- and  
7 that's our assertion -- in order to make their information of  
8 more value to the government. I'm sure the Court is aware that  
9 that does happen.

10 We're not here to get into an  
11 informant-by-informant fight over whether this informant's  
12 information came from Joe Blow and this is his motivation.  
13 That's not what this hearing is really about. It's just our  
14 position that, you know, he -- you have his financial  
15 statements. You can see that the majority of his assets were  
16 from inheritance and from building a business over the years.

17 It's not to say that the additional money wasn't  
18 well-received on his part and utilized, you know, to support  
19 his family and to do things that he otherwise couldn't afford.  
20 And that's why he's here, and that's why he's pled guilty.

21 The other thing the Court -- so, in determining  
22 where between the ten years and the 15 years, we would want to  
23 submit mitigation to the Court to encourage the Court to  
24 mitigate the maximum penalty allowed by law and come down to  
25 the ten or closer to the ten.

1 THE COURT: Let me -- has he been cooperative?

2 MR. ZWERLING: He has been -- that's really more for  
3 the Government to say, Your Honor, but my information is that  
4 he's been extremely cooperative from before his arrest.

5 When he found out the Government were as interested  
6 in him, he voluntarily had, I believe, four meetings with the  
7 United States authorities, both in the United States and other  
8 places in the Caribbean. And then when he found out there was  
9 an indictment, he agreed to meet the DEA, get on their plane,  
10 and come back to the United States with no extradition  
11 proceedings, nothing. And that since he's been here, he has  
12 been available to them and has given them information in their  
13 debriefs that they've had, and that I suspect and hope they  
14 will continue to have. Because he wants to make -- get the  
15 whole story out, and he wants to be as helpful as he can.

16 Thank you, Your Honor. Mr. Rodriguez will...

17 THE COURT: You want to -- I'll let him answer this  
18 part of it and then I'll...

19 MR. BEN'ARY: Just briefly, Your Honor, with the  
20 Court's permission, I want to address the -- the guideline  
21 issue.

22 THE COURT: Yeah.

23 MR. BEN'ARY: As I understand the sentencing régime,  
24 the first thing that the Court has to do is correctly calculate  
25 the guidelines. And in this case, a correct calculation of the



1 guidelines includes the application of that terrorism  
2 enhancement because the defendant's conduct meets the prongs of  
3 that enhancement.

4 I don't believe that it's the case to pick what  
5 your ultimate sentence is and then ask the Court without  
6 further basis to adjust the criminal history and the guideline  
7 level to fit it. Now the Court, after correctly calculating  
8 the guidelines, can do exactly what the defense asks in terms  
9 of a variance. But in terms of a correct guidelines  
10 calculation, it is as it appears in the presentence report.

11 THE COURT: Well, his argument is that the category VI  
12 overstates his criminal history.

13 MR. BEN'ARY: Well -- but, Your Honor, it is a  
14 Criminal History Category VI because of the application of the  
15 terrorism enhancement. Now the Sentencing Commission has made  
16 the decision that because of the danger posed by people that  
17 undertake terrorist acts is so great, that anyone that gets  
18 that enhancement applied to them is automatically a Criminal  
19 History Category VI, and I don't believe it's appropriate to  
20 then go around that by adjusting it back downwards.

21 It is a Criminal History Category VI that is  
22 proper, and that's because the Sentencing Commission has made  
23 the decision that those that undertake this type of activity  
24 should be treated because of the dangerousness, because of  
25 other factors that they consider should be considered in the

1 same category as those that have had a career of offenses. So,  
2 I don't think that it binds the Court in its final decision,  
3 but I -- I do think that a Criminal History Category VI is  
4 appropriate and it is only because of that application of the  
5 term is terrorism enhancement. Anyone that gets that  
6 enhancement applied is a Criminal History Category VI, no  
7 matter what else is on their prior history.

8 THE COURT: Very well.

9 Mr. Zwerling, any rebuttal?

10 MR. ZWERLING: Your Honor, the Sentencing Guidelines  
11 Commission has also said that if a person has a prior felony,  
12 you give three points. If you -- and so it gives the Court --  
13 it directs the Court to, you know, add up the three points for  
14 this and the two points for that and come out with a criminal  
15 history, and that's how you get to the initial criminal  
16 history. But the Court has the power to make a determination  
17 that when you look at the -- at the things that have made up  
18 the criminal behavior of the defendant over his lifetime, that  
19 that criminal history overstates what it should be. And the  
20 Court then can downgrade the categories to -- you know, from a  
21 III to a II or a IV to a II or whatever. And in one respect,  
22 as far as the ultimate sentence is concerned, it may not matter  
23 how you get there. But as far as designation and  
24 classification of a defendant, it does matter. And that's why  
25 we ask the Court to find that it overstated it.

1 THE COURT: Okay.

2 MR. ZWERLING: Thank you.

3 THE COURT: Let me -- I'll rule on this aspect of it,  
4 and then I'll hear from counsel again on sentencing.

5 Sentences are imposed in accordance with 18, U.S.  
6 Code, Section 3553(a). The Guidelines calculations are just  
7 one factor the Court takes into consideration when sentencing.  
8 *Kimbrough v. United States*, 552 U.S. 85 (2007); *Gall v. United*  
9 *States*, 552 U.S. 38 (2007). I understand that I am free to  
10 depart upwards or downwards from the guideline range and to  
11 grant variances as *Gall* permits district courts to impose  
12 sentences both above and below the guideline recommendations.  
13 See *Gall* at 45. I also understand that under *U.S. v. Nelson*,  
14 129 Supreme Court 890, page 892, a 2009 case, a sentencing  
15 court may not presume that a sentence within the applicable  
16 Sentencing Guidelines range is presumptively reasonable.

17 Certainly the overstatement of criminal history  
18 also is an appropriate downward departure in a case, and also  
19 it can be the basis for a variance.

20 I decline to do so in this case because I think  
21 that the sentencing enhancement based on the terrorists --  
22 terrorism is sufficient, and I'm not going to go ahead and vary  
23 from that. So accordingly, I'll leave him at the 39, VI.  
24 Okay.

25 All right. Mr. Rodriguez, I'll take your argument

1 as to where to put him within the ten to 15 years range.

2 MR. RODRIGUEZ: May I?

3 THE COURT: Yes, sir.

4 MR. RODRIGUEZ: Your Honor, once again, thank you very  
5 much.

6 I -- the purpose of my argument to you today is  
7 basically that we feel that under the -- the plea agreement  
8 that we entered with the United States and the fact that the  
9 Government contemplated that we could argue for a sentence of  
10 ten years, or 120 months, and they would be asking for 15  
11 years, or 180 months, there would be a -- a gap where the  
12 judge -- where Your Honor could understand and take into  
13 consideration the actions of the defendant that he took in an  
14 effort to correct this matter.

15 I would like to point to the Court, Your Honor,  
16 that the General served his country for a period of 27 years,  
17 beginning as a mere policeman and rising to officer and rising  
18 to a -- to the rank of General.

19 While being a colonel in the Gaula, or the  
20 anti-kidnapping department in Medellin, he saved and solved  
21 more than 297 kidnappings during this time.

22 In one of these kidnappings, Your Honor, he was  
23 shot and injured and in -- received a bullet in the leg two  
24 days before he was about to get married. Of course, it was a  
25 delay in the marriage, but nevertheless, he was serving his

1 country and continued serving his country.

2 Later on because of the efficient work that this  
3 gentleman did, as an officer and in -- as an officer in charge  
4 of the Gaula and because he was in Medellin during that period,  
5 the governor of Medellin was the person who later would be  
6 president, Álvaro Uribe.

7 At that time, because of his reputation and because  
8 of his bravery, Mr. Uribe named him as his personal security,  
9 and he was with him while he was governor, and he was later  
10 named the secretary of the defense of the president or in  
11 charge of the president's detail for -- for many years.

12 He was -- in fact, during the process that he was  
13 in charge of the -- of the president's security at one time,  
14 there were -- there was an attempt on the president, and a bomb  
15 exploded very close to -- to where he was with the president.  
16 And though the president was saved without any problems, the  
17 General, as the result of the bomb, lost ear -- lost hearing.  
18 And today, as we stand before the Court, he has lost  
19 considerable amount of hearing because of the resulting result  
20 of that particular attempt.

21 Your Honor, we do -- though he represented his  
22 country honorably, we realize and he realizes that he made some  
23 mistakes. He realizes that he did take some compensation, and  
24 that he did make some mistakes during the course of what  
25 started out in Medellin to gather information and to gather --

1 and to gather information on possible crimes and things, that  
2 you start talking to some of the -- these people that can  
3 provide you information, and eventually the General did fall  
4 and -- and receive some illegal compensation.

5 We -- he realized it, but he continued on. That --  
6 that was for a period from 2001 to 2006. After that -- or  
7 2008.

8 After that, he continued his -- his career. He,  
9 upon knowing that he was being investigated by the United  
10 States, voluntarily met with the United States, like my  
11 co-counsel said -- and I don't mean to be repetitious -- on  
12 four different occasions, extensively on the rules of -- set by  
13 the United States and the U.S. Attorney in this particular  
14 case.

15 He met. He was under the impression that he was  
16 going to try to -- that he was cooperating. In lieu of being  
17 indicted, however, that did not occur, and he was later on  
18 indicted.

19 Upon being indicted, he made arrangements to  
20 surrender. He did not hide behind the curtain of extradition;  
21 did not go running. He surrendered himself. They send a --  
22 voluntarily surrender himself.

23 They send a plane for DEA, and he came in without  
24 any promises, without any -- without expecting anything, but  
25 with his -- with his desire to continue cooperating, to

1 continue his name, clear his name, and to most importantly  
2 correct whatever wrong he had committed.

3 I think taking in the light positive, this is a  
4 total acceptance of responsibility. This is a total break with  
5 the life that he may have fallen into and have left, and this  
6 is a way of accepting the fall that he had taken and honorably  
7 tried to correct it. And I think, Your Honor, this is -- this  
8 is a very important factor when the Court is considering the  
9 issuance of a -- of a sentence and applies the variances of  
10 18, U.S.C., 3553(a).

11 I think that -- though the nature of this offense,  
12 because of the charge, is a very serious and harsh offense.  
13 There is -- there is space for which the conduct of the General  
14 falls below the 15 years and falls well below within the ten  
15 years as -- as was agreed to and allowed by the Government  
16 to -- to argue.

17 Your Honor, our position is that these 12 points  
18 that were added was in an effort to secure the position of the  
19 Government in the 15 years, because if you look at the table  
20 of -- of the providing of the statute, of the  
21 guidelines providing support material, that particular  
22 guideline is much lower. So with the 12 points, it raises to a  
23 42 where it would be -- otherwise would be a 26 plus four, plus  
24 two, plus two, and it would a 30 less three at 27.

25 But we're not asking for a variance in that sense.

1 We signed for ten years. We realized when we were signing the  
2 plea agreement that we could ask for ten years and that the  
3 Government could ask for 15 years. But I think that the -- the  
4 facts in this particular case, as they apply to General  
5 Santoyo, do fit the role where -- where the Court should  
6 consider a lower -- imposing the lower sentence allowable,  
7 which is that of ten years.

8           Your Honor, I could reemphasize and go on, but I  
9 think that -- that first your indication that it's a category I  
10 is one of the things that's completely very -- ruling of a  
11 category I would be very important because we think that this  
12 is something that would be extremely harsh on him.

13           We will be asking the Court if the Court could  
14 recommend at the time of sentencing today that the defendant  
15 be, whenever he's placed, whenever he's finished with his --  
16 with his duties here, to be sent to Coleman, Florida. FCI  
17 Coleman in Florida where he's a --

18           THE COURT: Okay. I'll grant your motion as to that.

19           MR. RODRIGUEZ: Okay. Thank you very much.

20           And we feel, Your Honor, that if you grant -- if  
21 you vary or grant a variance to a level 32, which is basically  
22 from a 39 to a 32 is to lower the five points and grant a  
23 sentence of 121 months, it would serve and satisfy the plea  
24 agreement in which we agree and sign. And that sentence alone  
25 after cooperation, after self-surrender, and after just coming



1 without any expectations, it's harsh enough to show first that  
2 the United States do take into account and do recognize the  
3 good acts of people who make mistakes and try to correct  
4 their -- their wrongs; and secondly, sends out a harsh enough  
5 message that people similarly, like him, would be in a position  
6 to consider this and -- and neither surrender themselves or  
7 know that the law would be very harsh on them upon being  
8 apprehended.

9           Your Honor, thank you very much. I hope I did not  
10 speak too much.

11           THE COURT: No, it's --

12           MR. RODRIGUEZ: It's been a pleasure --

13           THE COURT: Don't apologize for that.

14           MR. RODRIGUEZ: -- to be before you.

15           THE COURT: It's an important case. I'm glad to hear  
16 from you.

17           MR. RODRIGUEZ: It's been a pleasure being before you,  
18 Your Honor, and we hope that you realize that the facts in this  
19 particular case show not a terrorist or not one that -- but one  
20 good man who made a mistake, and as a result of that, he's paid  
21 or he's paying very severely and very harshly.

22           Have a good day and thank you very much.

23           THE COURT: Mr. Ben'Ary. Let me ask you, Mr. Ben'Ary,  
24 at the outset, I mean, 39, VI is 360 to life which is more than  
25 the 15 years by the statute. Isn't the more appropriate

1 category is argued by Mr. Zwerling at 32, I; 121 to 151?

2 MR. BEN'ARY: Well, no, Your Honor. A correct  
3 calculation of the -- just talking about the guidelines -- and  
4 I was under the impression that the Court ruled.

5 THE COURT: Yeah.

6 MR. BEN'ARY: A correct calculation of the guidelines  
7 is 39, VI because --

8 THE COURT: Yeah, I've ruled that way, but --

9 MR. BEN'ARY: So I agree that the Court could vary,  
10 but if you're talking about the legally correct calculation of  
11 the guidelines, it is -- it is the way that the probation  
12 office calculated it.

13 THE COURT: Unfortunately, that seems to be the case.

14 MR. BEN'ARY: And --

15 THE COURT: Okay.

16 Go ahead.

17 MR. BEN'ARY: Moving past the guidelines, because as  
18 the Court said and as everyone knows, the guidelines are merely  
19 one factor that the Court needs to consider. Overall, Your  
20 Honor, this case at its base is about betrayal.

21 You have sitting before you someone who had a  
22 distinguished -- no question -- distinguished career as a  
23 Colombian law enforcement official. And that's really --  
24 that's really the confusing thing about the case, Your Honor,  
25 because while it certainly is a mitigating factor, isn't it

1 also what makes this case an aggravated case because the  
2 defendant had risen to a level where he had access to  
3 information helpful to terrorists. He had risen to a level  
4 where he had influence, and terrorists were buoyed in their  
5 efforts simply by knowing that they had access to someone at  
6 that high level. And didn't the defendant know because of his  
7 years of service what a horrible impact providing help,  
8 providing information to these terrorists would be.

9           Your Honor, as a patrol officer, if someone had  
10 told this defendant that his commanding officer, that the  
11 General of his unit was working with the very targets of his  
12 investigation, it would have been disastrous to his morale, it  
13 would have been disastrous to his efforts as a patrol officer.

14           And so when the defendant, as the head of the  
15 Gaula, the anti-kidnapping forces in Medellin provided help to  
16 AUC, these kidnapers, these assassins, these drug traffickers,  
17 he had to know that that impact would be felt by patrol  
18 officers within the Colombian National Police. He had to know  
19 that it would be felt by other Colombian military and law  
20 enforcement members because his actions were putting them in  
21 danger and frustrating their cause. He had to know that his  
22 actions had a bad impact on law enforcement in the United  
23 States because as the -- as the defendant knew, Colombian law  
24 enforcement worked closely with United States law enforcement,  
25 including DEA.

1           But most of all, Your Honor, because the defendant  
2 started out as a patrolman, worked up through the ranks, had  
3 risen as high as he is, is as smart as he is, he had to know  
4 that his actions were bad for the Colombian people.

5           Now, it is true, perhaps, that the defendant  
6 thought that he could gain information from these AUC members  
7 to fight the FARC, Your Honor, but AUC, while smaller than the  
8 FARC, is no less dangerous, no less brutal, was involved in the  
9 same type of criminal activities from assassination to drug  
10 trafficking. And the defendant knew that because he was the  
11 head of the anti-kidnapping anti-terrorism unit.

12           In terms of the amounts that the defendant took in  
13 terms of financial compensation for his actions, that's not the  
14 significant factor in this case. The defendant didn't need  
15 whatever amounts he took, as you've heard. He knew that he was  
16 helping out people that were conducting murders, conducting  
17 kidnappings, conducting assassinations, and were a danger to  
18 his colleagues, both in Colombia and the United States, and the  
19 Colombian people, the very people that he was entrusted with  
20 protecting.

21           And so, Your Honor, in dealing with where in the  
22 10- to 15-year range the defendant should be sentenced, there  
23 is no question that the Court should consider his distinguished  
24 career as a mitigating factor. There's no question that the  
25 Court should consider the fact that he has accepted

1 responsibility, and that he has cooperated with the United  
2 States. And I -- I expect to be back on another proceeding  
3 where we're going to deal with --

4 THE COURT: You feel there would be a Rule 35?

5 MR. BEN'ARY: I can't tell the Court because it's a  
6 decision that gets made by a committee, but I think that that's  
7 a significant --

8 THE COURT: But he's been cooperative with you?

9 MR. BEN'ARY: He has been.

10 And so I think the important thing that the Court  
11 has to balance here is those mitigators, how -- taking those  
12 into consideration, but also taking into consideration that the  
13 same mitigating factors are also aggravating factors, what's  
14 the appropriate sentence. Certainly had the -- had the  
15 defendant not had the distinguished career and had he not  
16 cooperated, the United States may have insisted on proceeding  
17 on other charges that had a higher statutory max, but we did  
18 not because we felt that this range allowed a significant  
19 leeway in fashioning the appropriate sentence.

20 But we do feel that it's important to impose a  
21 sentence that sends the message that this type of dangerous  
22 activity, this type of betrayal by someone so high in law  
23 enforcement will be treated severely. Certainly people in this  
24 area being so close to the nation's capital are in tune to the  
25 bad effects of public corruption and corruption of government

1 officials. That I think sensitivity is heightened in Colombia  
2 where they've had ongoing problems with public corruption.

3           The message that this Court's sentence needs to  
4 send, Your Honor, respectfully is that those who have these  
5 distinguished high positions with access to information, if  
6 they choose to take the financial bait and disclose helpful  
7 information to those who their -- from whom they are supposed  
8 to be protecting the public, they are going to be met with  
9 harsh sentences. They're going to be prosecuted, whether here  
10 or abroad, and the sentences are going to reflect the danger  
11 that this activity causes.

12           And so for those reasons, Your Honor, the United  
13 States' position is that a 15-year sentence is appropriate.

14           Thank you.

15           THE COURT: Okay. General, you want to come to the  
16 podium, please.

17           Anything you want to say before I pronounce  
18 sentence on you?

19           THE DEFENDANT: Your Honor, I recognize that I've made  
20 a mistake, that I made mistakes. I am very sorry, and  
21 responding that I'm here.

22           I apologize to my family for the difficult position  
23 that I've put them into, and I ask you to be benevolent in  
24 considering your sentence.

25           Thank you.

1           THE COURT: The Court is going to commit you to the  
2 Bureau of Prisons for 13 years.

3           Upon release from imprisonment, you're to complete  
4 a five-year term of supervised release. As a condition of  
5 supervised release, upon completion of your term of  
6 imprisonment, you are to surrender to a duly-authorized  
7 immigration official of the Department of Homeland Security,  
8 United States Immigration and Customs Enforcement for  
9 deportation review in accordance with established procedures  
10 provided by the Immigration and Naturalization Act, 8, U.S.  
11 Code, Section 1101, et cetera.

12           As a further condition of supervised release, if  
13 ordered deported, you shall remain outside the United States.

14           You shall pay a \$125,000 fine, due and payable  
15 immediately.

16           And I'll note that you are married, have three  
17 children, only one of whom is dependent upon you. And you  
18 certainly have the assets to pay that fine.

19           \$100 special assessment is also due. Both the fine  
20 and the special assessment are due now in this case, and I'm  
21 going to give you credit for time served in this case.

22           This sentence reflects the nature and  
23 circumstances; seriousness of the offense. And certainly it is  
24 a serious offense because it's a conspiracy to provide material  
25 support and resources to a foreign terrorist organization.

1 Reflects the history and characteristics to the  
2 defendant. You certainly have spent a long time in law  
3 enforcement in Colombia. You rose to the rank of General. You  
4 apparently are also involved with saving or rescuing 297 people  
5 during that time.

6 And I'll note also in this case that you cooperated  
7 with the law enforcement, and a risk to yourself and your  
8 family. But you did provide from October '01 to November '08  
9 material support to a designated foreign terrorist  
10 organization, the self-defense foreign forces of Colombia, or  
11 AUC, and you worked in the anti-terrorist unit.

12 And I'll note that you waived extradition, and you  
13 voluntarily came to the United States. I've given you credit  
14 for that.

15 You're 53 years old. In this case, the Court feels  
16 that this provides adequate deterrence to criminal conduct;  
17 provides just punishment for the offense; protects the public  
18 from further crimes of defendant; and avoids unwarranted  
19 sentencing disparities.

20 The thing and unusual part of this case is the fact  
21 that you were a law enforcement officer and did a lot of good.  
22 And unfortunately for that seven-year period, you were involved  
23 in tipping off the AUC and providing them aid and support.

24 You are remorseful. I've considered that. I've  
25 considered also the fact that you're going to be deported in



1 fashioning this sentence, and also the fact that you've been  
2 cooperative with the Government.

3 Do you understand the sentence?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. I'll remand him to the custody of  
6 the Marshal, and give him the credit for time served.

7 Any particular place you want to recommend?

8 MR. RODRIGUEZ: Your Honor, as I mentioned before --

9 THE COURT: Yeah, you did. I granted your motion as  
10 to that --

11 MR. RODRIGUEZ: Thank you very much.

12 THE COURT: -- and as to Florida.

13 Okay. Thank you.

14 I remand him to the custody of the Marshal at this  
15 time.

16 Thank you.

17 (PROCEEDINGS CONCLUDED AT 10:15 A.M.)

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1 UNITED STATES DISTRICT COURT )

2 EASTERN DISTRICT OF VIRGINIA )

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4 I, JULIE A. GOODWIN, Official Court Reporter for  
5 the United States District Court, Eastern District of Virginia,  
6 do hereby certify that the foregoing is a correct transcript  
7 from the record of proceedings in the above matter, to the best  
8 of my ability.

9 I further certify that I am neither counsel for,  
10 related to, nor employed by any of the parties to the action in  
11 which this proceeding was taken, and further that I am not  
12 financially nor otherwise interested in the outcome of the  
13 action.

14 Certified to by me this MAY 13TH day of DECEMBER,  
15 2013.

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/s/  
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